WASHINGTON NOTES

The decision of the Federal Supreme Court in the case of William R. Willcox *et al.*, constituting the Public Service Commission of New York *vs.* the Consolidated Gas Co. of New York, handed down January 4, 1909 (Nos. 396, 397, and 398, October Term, 1908), has set an important precedent regarding the establishment of charges for public-service corporations by municipal or state commissions. In this case relief was asked of the United States Circuit Court for the Southern District of New York by the Consolidated Gas Co. through injunction against the enforcement of certain acts of the New York legislature as well as of an order made by the New York Gas Commission to take effect May 1, 1906, and fixing the rates for gas in New York City at 80 cents per 1,000 feet. The ground for the relief asked for was the alleged unconstitutionality of the acts and of the order because the rates fixed were so low as to be confiscatory. The court recognizes at the outset that the governing principle in all such cases is that the rates charged must be plainly unreasonable to the extent that their enforcement would be equivalent to the taking of property for public use without such compensation as is due to the owner and the public. This leads to a discussion of the reasonable value of the property of monopolistic public-service corporations. The court concludes that the element of monopolistic increase in the value of the Consolidated Gas Company franchises, occurring since the concern was formed out of a group of other companies, should be excluded in determining the amount on which a reasonable return is to be earned and that "the court ought to accept the valuation of the franchises fixed and agreed upon under the act of 1884 [granting authority to consolidate manufacturing corporations] as conclusive at that time." This is held although the court guards itself by providing that "the decision . . . . can form no precedent in regard to the valuation of franchises generally where the facts are not similar to those in the case before us." The court also accepts

the return of 6 per cent. upon the determined valuation as a fair interest, all things considered, though it specifically provides that "there is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprise." Perhaps the most striking feature in the decision is the statement that "where the rate complained of shows in any event a very narrow line of division between possible confiscation and proper regulation, as based upon the value of the property found by the courts below, and the division depends upon opinions as to value which differ considerably among the witnesses and also upon the results in the future of operating under the rate objected to so that the material fact of value is left much in doubt, a court of equity ought not to interfere by injunction before a fair trial has been made of continuing the business under that rate and thus eliminating as far as is possible the doubt arising from opinions as opposed to facts."

In a decision rendered by the Supreme Court, January 4, 1909, the petition of the government asking for a writ removing the Standard Oil case decided by the Circuit Court of Appeals in Chicago to the Federal tribunal is denied and some important consequences with reference to the application of existing anti-trust legislation are entailed. The action of the Supreme Court will maintain in effect the decision of Judge Grosscup and his associates reversing the opinion of Judge Landis imposing a fine of $29,000,000 upon the Standard Oil Co. In consequence the other suits against the Standard Oil Co. now pending in various Federal courts (and based on precisely the same evidence which was offered in the Chicago case) are endangered. This is because the interpretation of the Circuit Court of Appeals is now the highest authority though other district judges are of course not absolutely bound to observe the opinions there laid down. More important still is the fact that the interpretation thus given to the Elkins Act will be likely to control in future cases. In reversing the decision of Judge Landis the Circuit Court of Appeals found three grounds for criticism. One of these was the fact that the unit of offense—the carload shipment—which had been selected was improper. The point thus raised might easily have been settled by further litigation though the opinion of the higher court gave no light upon its settlement. A second ground of complaint was that the testimony of one Edward

Bogardus as to the knowledge of the Standard with respect to certain facts regarding the filing of the railroad rates on oil was excluded by Judge Landis. This was an error on the part of the higher court inasmuch as the record shows plainly that the testimony of Bogardus was received. The really important portion of the decision is found in the section which holds that in order to be liable under the Elkins Act, for receiving rebates, a shipper must be shown to have been aware that the rate granted him was not the true or legal rate filed with the Interstate Commerce Commission. Inasmuch as it is practically out of the question to show any such thing in ordinary cases, it is the view of the best authorities that the decision of the Court of Appeals coupled with the refusal of the Federal Supreme Court to review the case practically repeals the Elkins Act so far as real effect is concerned.

The difficulty experienced by the Ways and Means Committee in adjusting tariff rates in such wise as to afford a guarantee of adequate revenue to meet the largely increased expenses of government has brought about a practical certainty that new sources will be resorted to in the forthcoming tariff measure. Of the various expedients recommended two are now in the lead. One of these is the introduction of duties upon coffee and tea, the other the revival of the revenue system of the Spanish War. Taxes on coffee are strongly advocated by representatives of Philippine, Hawaiian, and especially Porto Rican, planters, the belief being that by imposing a tariff upon coffee such protection would be afforded to insular interests as would render the industry profitable. A retaliatory provision intended for use against those countries which, like Brazil, impose export taxes upon coffee is urged by a number of legislators and administrators. Large speculative interests in New York and Boston who have become encumbered with stocks of coffees bought at unreasonable prices owing to the adoption of the Brazilian valorization scheme are also strongly favoring the duty though fearing the adoption of a countervailing internal revenue tax designed to prevent the accrual of any speculative profits to holders here. Against the adoption of the coffee tax is the fear that political capital may be furnished to the opposition. The duty on tea has few private interests behind it, the argument in its favor being the revenue yield expected, while against it is the same political argument that applies to the coffee tax. So difficult is the discussion

proving that resort to stamp duties, inheritance taxes, and other expedients is apparently preferred by many legislators. The controversy has already become so sharp as to compel preliminary work on the revenue problem in the belief that no positive or available results will be attained in the lower chamber, the bill being thus left to be really prepared in the upper.

In issuing a call for $25,000,000 of deposits (January 9, 1909) Secretary Cortelyou again draws attention to the rapid waning of the great surplus lately in the Treasury. The decline of the available cash has gone on more rapidly than was expected and at the time of the call only about $29,000,000 of free cash was on hand in the vaults. Simultaneously the deposits to the credit of the Treasurer of the United States in national bank depositories amounted to about $112,000,000. The deficit for the fiscal year to the same date had reached approximately $68,000,000, nearly $5,000,000 of this amount having been incurred since January 1. A fair computation indicates the probability of at least $125,000,000 deficit for the year instead of the $114,000,000 suggested by Secretary Cortelyou in his annual letter to Congress. This points to early calls on the banks for a further surrender of deposits, and emphasizes the importance of speedy and effective revenue legislation by Congress since from present prospects not much over $60,000,000 of deposits will remain at the close of the present fiscal year. An estimated deficit of at least $130,000,000 for the succeeding year will be incurred in the absence of new legislation. The banks will have no trouble in providing the $25,000,000 now asked or probably in meeting any calls that may be made in the near future. Effects on the market resulting from the payment will be practically nil, since the Treasury is losing cash to the banks nearly as fast as it is being paid into the vaults.

The first document issued by the National Monetary Commission is a thick pamphlet (Hearings Before the National Monetary Commission on Changes in the Administrative Features of the National Banking Laws) relating to the proposed legislation for the revision of the National Bank Act in its administrative aspects. Early last summer a subcommittee of the National Monetary Commission under the chairmanship of John W. Weeks, of Massachusetts, took in hand the work of the Commission relating to administrative

changes and requested the office of the Comptroller of the Currency to prepare a memorandum indicating the innovations desired in existing law. After the receipt of this memorandum a set of questions practically embodying the points mentioned by the administrative officials was forwarded to bankers and bank examiners throughout the country. Shortly before the reassembling of Congress a committee representing the American Bankers Association was called to Washington and a hearing was given by the Commission to the members of the committee, the officials of the Comptroller's office, the Comptroller himself, and to the Secretary of the Treasury. These hearings were in private but the documents now made public give a verbatim report of the proceedings as well as the detailed changes that were asked for. Of these changes a large number relate to points of administrative detail solely but there is one of considerable importance. This is a proposed clause whereby the amount of paper discounted for a single firm or indorser by any bank is to be limited by law just as the amount of direct loans that can be made to a single person is now limited. The basis for making this suggestion was the danger in allowing banks to become excessive holders of a single firm's paper. It was pointed out that the discounting of paper in this way differs in no respect, so far as concerns its effect upon bank conditions, from the direct lending of funds. The suggestion of the officials was not accepted by the bankers and was unfavorably regarded by the members of the Commission. In general a marked repugnance to any increase in the Comptroller's power of inspection and control was exhibited by the bankers and by their representatives on the Commission. Some tendency to criticize the efforts of the Comptroller to secure a more stringent control of the banks was also apparent. The Treasury officials have been requested to formulate a bill embodying the suggestions made to the Commission that were not objected to and it is supposed that this measure may pass Congress at the current session.

Simultaneously with the hearings, the Commission has made public as a separate document (Replies to the Circular Letter of Inquiry of September 26, 1908) the text of the questions sent to the bankers and of their replies. The questions cover a wide range of topics relating to the present provisions of the national banking act. More interesting than any other phase of the subject, however, is that of bank examinations—the topic on which the Comp-

troller has been working during the past few months. The bankers quite generally admit that examinations as now conducted are exceedingly faulty and that they do not result in recording the real conditions of the institutions examined. The recommendations made on this as on other topics by the so-called practical men, are, however, more than unsatisfactory and show little originality. As a result the administration is being thrown back upon its own efforts in improving examinations. In orders issued during December, 1908, and January, 1909, Comptroller Murray, with the consent of Secretary Cortelyou, has required bank examiners to give bond in the sum of $20,000 and to take an oath of office, upon reporting for duty. He has further appointed a "national bank examiner at large" (the first appointment of the kind ever made). It will be the duty of this officer to visit institutions whose affairs are reported to be in a bad state and to remain with them until conditions become satisfactory. Finally he has required the examiners to cease being borrowers or stockholders in any national bank in the system, thus correcting a condition that had become fairly notorious and had aroused much hostile criticism.